



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 17, 2003

Ms. Kimberley Mickelson  
Olson & Olson  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR2003-2638

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179489.

The City of Seabrook (the "city"), which you represent, received a request for information concerning two investigations by the City of Seabrook Police Department and the Texas Rangers relating to allegations of criminal conduct by two named city employees. You state that some information has been released to the requestor. You claim that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

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<sup>1</sup>In your initial request for a decision from this office, you claim that the requested information may be excepted from disclosure under section 552.103 of the Government Code. In your subsequent correspondence to this office, you have only provided arguments in support of your section 552.108 claim. As you did not submit to this office written comments stating the reasons why section 552.103 would allow the information to be withheld, we find that you have waived this exception. See Gov't Code §§ 552.301, .302.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. To claim the exception under section 552.108(b)(2), a governmental body must demonstrate that the requested information is an internal record or notation of a law enforcement agency that relates to an investigation that has concluded in a final result other than a conviction or deferred adjudication.<sup>2</sup> You state that the investigations at issue have been concluded, and you have submitted documentation showing that the Harris County District Attorney's Office has declined the cases for prosecution. Thus, you assert that the submitted information pertains to cases that concluded in a final result other than a conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) is applicable to the submitted police investigatory files, which we have marked. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information does not include driver's license numbers or license plate numbers. *Id.*; see Gov't Code § 552.130. Thus, with the exception of the basic information, you may withhold the police investigatory information we have marked based on section 552.108(a)(2). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

The remainder of the submitted information consists of information from the personnel file of one of the individuals at issue, an employee of the city Parks and Recreation Department. Personnel information maintained by the Parks and Recreation Department is not investigatory information held by a law enforcement agency. Moreover, this personnel

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<sup>2</sup>We note that section 552.108 does not apply to a police department's internal administrative investigations that do not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

information is not an internal record or notation of a law enforcement agency. *See* Gov't Code §§ 552.108(a)(2), (b)(2). Because you have not otherwise explained how the personnel information at issue constitutes investigatory information held by a law enforcement agency or an internal record or notation of a law enforcement agency, we find you have not adequately demonstrated the applicability of section 552.108 to this information. Consequently, the city may not withhold the personnel information we have marked pursuant to section 552.108 of the Government Code.

We note that the submitted personnel information contains information that may be excepted under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether information is protected by section 552.117 must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Consequently, if the city officials and employees identified in the submitted information timely elected to keep their section 552.117 information confidential, the city must withhold this information, which we have marked, under section 552.117 of the Government Code. If these individuals did not timely elect to keep this information confidential, the city may not withhold the marked information under section 552.117 of the Government Code.

The personnel information at issue also contains Texas driver's license numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold the marked driver's license numbers under section 552.130.

Finally, the personnel information at issue also contains the social security number of a member of the public. A social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments

to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>3</sup> See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, with the exception of basic information, the city may withhold the marked police investigatory information under section 552.108(a)(2) of the Government Code. If the city officials and employees identified in the remaining information timely elected to keep section 552.117 information confidential, the city must withhold the information we have marked under section 552.117 of the Government Code. Driver's license numbers are excepted from disclosure under section 552.130 of the Government Code. A social security number may be confidential under section 552.101 of the Government Code in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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<sup>3</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

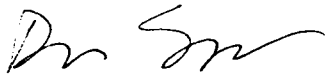
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 179489

Enc: Submitted documents

c: Mr. Ted McCollom  
4600 South Flamingo Drive  
Seabrook, Texas 77586  
(w/o enclosures)